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15 UNITED STATES DISTRICT COURT
16 CENTRAL DISTRICT OF CALIFORNIA

17 **TRUSTEES OF THE SOUTHERN**
CALIFORNIA PIPE TRADES HEALTH
18 **AND WELFARE TRUST FUND; et al,**

19 **Plaintiffs,**
20 **v.**

21 **CIRCULATING AIR, INC., a California**
corporation,

22 **Defendant.**

Case No. 2:23-cv-08624-SK

STIPULATED PROTECTIVE ORDER

Complaint Filed: October 12, 2023
Answer Filed: December 14, 2023

1. A. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation may be warranted. Accordingly, the parties hereby stipulate to and petition the Court to enter the following Stipulated Protective Order. The parties acknowledge that this Order does not confer blanket protections on all disclosures or responses to discovery and that the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles. The parties further acknowledge, as set forth in Section 12.3 (Filing Protected Material), below, that this Stipulated Protective Order does not entitle them to a file confidential information under seal; Civil Local Rule 79-5 sets forth the procedures that must be followed and the standards that will be applied when a party seeks permission from the court to file material under seal.

B. GOOD CAUSE STATEMENT

Discovery in this action may involve production of confidential, proprietary or private information for which special protection from public disclosure may be warranted. Specifically, Plaintiffs seek information about Defendant's contracts with various customers and employment data regarding nonparties. Thus, discovery in this case involves some disclosure of private employee information as well as sensitive business information for which special protection from public disclosure may be warranted. Such confidential materials and information may consist of, among other things, trade secrets, confidential business or financial information (including information implicating privacy rights of third parties), information regarding confidential business practices, or information implicating privacy rights, information otherwise generally unavailable to the public, or which may be privileged or otherwise protected from disclosure under state or federal statutes, court rules, case decisions, or common law.

1 Accordingly, to expedite the flow of information, to facilitate the prompt
2 resolution of disputes over confidentiality of discovery materials, to adequately
3 protect information the parties are entitled to keep confidential, to ensure that the
4 parties are permitted reasonable necessary uses of such material in preparation for
5 and in the conduct of trial, to address their handling at the end of the litigation, and
6 serve the ends of justice, a protective order for such information is justified in this
7 matter. It is the intent of the parties that information will not be designated as
8 confidential for tactical reasons and that nothing be so designated without a good
9 faith belief that it has been maintained in a confidential, non-public manner, and
10 there is good cause why it should not be part of the public record of this case.
11

12 2. DEFINITIONS

13 2.1 Action: *Trustees of the Southern California Pipe Trades Health and*
14 *Welfare Trust Fund, et al. v. Circulating Air, Inc.*, Case No. 2:23-cv-08624-SK.

15 2.2 Challenging Party: a Party or Non-Party that challenges the
16 designation of information or items under this Order.

17 2.3 “CONFIDENTIAL” Information or Items: information (regardless of
18 how it is generated, stored, or maintained) or tangible things that qualify for
19 protection under Federal Rule of Civil Procedure 26(c), and as specified above in
20 the Good Cause Statement.

21 2.4 Counsel: Outside Counsel of Record and House Counsel (as well as
22 their support staff).

23 2.5 Designating Party: a Party or Non-Party that designates information
24 or items that it produces in disclosures or in responses to discovery as
25 “CONFIDENTIAL.”

26 2.6 Disclosure or Discovery Material: all items or information, regardless
27 of the medium or manner in which it is generated, stored, or maintained (including,
28 among other things, testimony, transcripts, and tangible things), that are produced

1 or generated in disclosures or responses to discovery in this matter.

2 2.7 Expert: a person with specialized knowledge or experience in a matter
3 pertinent to the litigation who has been retained by a Party or its counsel to serve as
4 an expert witness or as a consultant in this Action.

5 2.8 House Counsel: attorneys who are employees of a party to this Action.
6 House Counsel does not include Outside Counsel of Record or any other outside
7 counsel.

8 2.9 Non-Party: any natural person, partnership, corporation, association,
9 or other legal entity not named as a Party to this action.

10 2.10 Outside Counsel of Record: attorneys who are not employees of a
11 party to this Action but are retained to represent or advise a party to this Action and
12 have appeared in this Action on behalf of that party or are affiliated with a law firm
13 which has appeared on behalf of that party, including support staff.

14 2.11 Party: any party to this Action, including all of its officers, directors,
15 employees, trustees, administrators, consultants, retained experts, and Outside
16 Counsel of Record (and their support staffs).

17 2.12 Producing Party: a Party or Non-Party that produces Disclosure or
18 Discovery Material in this Action.

19 2.13 Professional Vendors: persons or entities that provide litigation
20 support services (e.g., photocopying, videotaping, translating, preparing exhibits or
21 demonstrations, and organizing, storing, or retrieving data in any form or medium)
22 and their employees and subcontractors.

23 2.14 Protected Material: any Disclosure or Discovery Material that is
24 designated as "CONFIDENTIAL."

25 2.15 Receiving Party: a Party that receives Disclosure or Discovery
26 Material from a Producing Party.

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1 3. SCOPE

2 The protections conferred by this Stipulation and Order cover not only
3 Protected Material (as defined above), but also (1) any information copied or
4 extracted from Protected Material; (2) all copies, excerpts, summaries, or
5 compilations of Protected Material; and (3) any testimony, conversations, or
6 presentations by Parties or their Counsel that might reveal Protected Material.

7 Any use of Protected Material at trial shall be governed by the orders of the
8 trial judge. This Order does not govern the use of Protected Material at trial.

9
10 4. DURATION

11 Even after final disposition of this litigation, the confidentiality obligations
12 imposed by this Order shall remain in effect until a Designating Party agrees
13 otherwise in writing or a court order otherwise directs. Final disposition shall be
14 deemed to be the later of (1) dismissal of all claims and defenses in this Action, with
15 or without prejudice; and (2) final judgment herein after the completion and
16 exhaustion of all appeals, rehearings, remands, trials, or reviews of this Action,
17 including the time limits for filing any motions or applications for extension of time
18 pursuant to applicable law.

19
20 5. DESIGNATING PROTECTED MATERIAL

21 5.1 Exercise of Restraint and Care in Designating Material for Protection.

22 Each Party or Non-Party that designates information or items for protection under
23 this Order must take care to limit any such designation to specific material that
24 qualifies under the appropriate standards. The Designating Party must designate for
25 protection only those parts of material, documents, items, or oral or written
26 communications that qualify so that other portions of the material, documents,
27 items, or communications for which protection is not warranted are not swept
28 unjustifiably within the ambit of this Order.

1 Mass, indiscriminate, or routinized designations are prohibited. Designations
2 that are shown to be clearly unjustified or that have been made for an improper
3 purpose (e.g., to unnecessarily encumber the case development process or to impose
4 unnecessary expenses and burdens on other parties) may expose the Designating
5 Party to sanctions.

6 If it comes to a Designating Party's attention that information or items that it
7 designated for protection do not qualify for protection, that Designating Party must
8 promptly notify all other Parties that it is withdrawing the inapplicable designation.

9 5.2 Manner and Timing of Designations. Except as otherwise provided in
10 this Order (see, e.g., second paragraph of Section 5.2(a) below), or as otherwise
11 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection
12 under this Order must be clearly so designated before the material is disclosed or
13 produced.

14 Designation in conformity with this Order requires:

15 (a) for information in documentary form (e.g., paper or electronic
16 documents, but excluding transcripts of depositions or other pretrial or trial
17 proceedings), that the Producing Party affix at a minimum, the legend
18 "CONFIDENTIAL" (hereinafter "CONFIDENTIAL legend"), to each page that
19 contains protected material. If only a portion or portions of the material on a page
20 qualifies for protection, the Producing Party also must clearly identify the protected
21 portion(s) (e.g., by making appropriate markings in the margins).

22 A Party or Non-Party that makes original documents available for
23 inspection need not designate them for protection until after the inspecting Party has
24 indicated which documents it would like copied and produced. During the
25 inspection and before the designation, all of the material made available for
26 inspection shall be deemed "CONFIDENTIAL." After the inspecting Party has
27 identified the documents it wants copied and produced, the Producing Party must
28 determine which documents, or portions thereof, qualify for protection under this

1 Order. Then, before producing the specified documents, the Producing Party must
2 affix the “CONFIDENTIAL legend” to each page that contains Protected Material.
3 If only a portion or portions of the material on a page qualifies for protection, the
4 Producing Party also must clearly identify the protected portion(s) (e.g., by making
5 appropriate markings in the margins).

6 (b) for testimony given in depositions that the Designating Party identify
7 the Disclosure or Discovery Material on the record, before the close of the
8 deposition all protected testimony.

9 (c) for information produced in some form other than documentary and
10 for any other tangible items, that the Producing Party affix in a prominent place on
11 the exterior of the container or containers in which the information is stored the
12 legend “CONFIDENTIAL.” If only a portion or portions of the information
13 warrants protection, the Producing Party, to the extent practicable, shall identify the
14 protected portion(s).

15 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
16 failure to designate qualified information or items does not, standing alone, waive
17 the Designating Party’s right to secure protection under this Order for such material.
18 Upon timely correction of a designation, the Receiving Party must make reasonable
19 efforts to assure that the material is treated in accordance with the provisions of this
20 Order.

21 22 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

23 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
24 designation of confidentiality at any time that is consistent with the Court’s
25 Scheduling Order.

26 6.2 Meet and Confer. The Challenging Party Shall initiate the dispute
27 resolution process under Civil Local Rule 37-1 et seq.

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6.3 The burden of persuasion in any such challenge proceeding shall be on the Designating Party. Frivolous challenges, and those made for an improper purpose (e.g., to harass or impose unnecessary expenses and burdens on other parties), may expose the Challenging Party to sanctions. Unless the Designating Party has waived or withdrawn the confidentiality designation, all parties shall continue to afford the material in question the level of protection to which it is entitled under the Producing Party's designation until the Court rules on the challenge.

7. ACCESS TO AND USE OF PROTECTED MATERIAL

7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or produced by another Party or by a Non-Party in connection with this Action only for prosecuting, defending, or attempting to settle this Action. Such Protected Material may be disclosed only to the categories of persons and under the conditions described in this Order. When the Action has been terminated, a Receiving Party must comply with the provisions of Section 13 below (FINAL DISPOSITION).

Protected Material must be stored and maintained by a Receiving Party at a location and in a secure manner that ensures that access is limited to the persons authorized under this Order.

7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise ordered by the Court or permitted in writing by the Designating Party, a Receiving Party may disclose any information or item designated "CONFIDENTIAL" only to:

(a) the Receiving Party's Outside Counsel of Record in this Action, as well as employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the information for this Action;

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1 (b) the officers, directors, employees (including House Counsel),
2 trustees, and administrators of the Receiving Party to whom disclosure is reasonably
3 necessary for this Action;

4 (c) Experts (as defined in this Order) of the Receiving Party to whom
5 disclosure is reasonably necessary for this Action and who have signed the
6 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

7 (d) Employees of the Southern California Pipe Trade Administrative
8 Corporation, Southern California Pipe Trades District Council No. 16 of the United
9 Association and its affiliated local unions, International Association of Sheet Metal,
10 Air, Rail and Transportation Workers Local Union 105, Airconditioning,
11 Refrigeration and Mechanical Contractors Association of Southern California, and
12 Air Conditioning Sheet Metal Association, to whom disclosure is reasonably
13 necessary for this Action and who have signed the “Acknowledgment and
14 Agreement to Be Bound” (Exhibit A);

15 (e) the Court and its personnel;

16 (f) court reporters and their staff;

17 (g) professional jury or trial consultants, mock jurors, and Professional
18 Vendors to whom disclosure is reasonably necessary for this Action and who have
19 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

20 (h) the author or recipient of a document containing the information or a
21 custodian or other person who otherwise possessed or knew the information;

22 (i) during their depositions, witnesses, and attorneys for witnesses, in the
23 Action to whom disclosure is reasonably necessary provided: (1) the deposing party
24 requests that the witness sign the form attached as Exhibit A hereto; and (2) they
25 will not be permitted to keep any confidential information unless they sign the
26 “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless otherwise
27 agreed by the Designating Party or ordered by the Court. Pages of transcribed
28 deposition testimony or exhibits to depositions that reveal Protected Material may

1 be separately bound by the court reporter and may not be disclosed to anyone except
2 as permitted under this Stipulated Protective Order; and

3 (j) any mediator or settlement officer, and their supporting personnel,
4 mutually agreed upon by any of the parties engaged in settlement discussions.
5

6 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED
7 IN OTHER LITIGATION

8 If a Party is served with a subpoena or a court order issued in other litigation
9 that compels disclosure of any information or items designated in this Action as
10 “CONFIDENTIAL,” that Party must:

11 (a) promptly notify in writing the Designating Party. Such notification
12 shall include a copy of the subpoena or court order;

13 (b) promptly notify in writing the party who caused the subpoena or order
14 to issue in the other litigation that some or all of the material covered by the
15 subpoena or order is subject to this Protective Order. Such notification shall include
16 a copy of this Stipulated Protective Order; and

17 (c) cooperate with respect to all reasonable procedures sought to be
18 pursued by the Designating Party whose Protected Material may be affected.

19 If the Designating Party timely seeks a protective order, the Party served with
20 the subpoena or court order shall not produce any information designated in this
21 action as “CONFIDENTIAL” before a determination by the court from which the
22 subpoena or order issued, unless the Party has obtained the Designating Party’s
23 permission. The Designating Party shall bear the burden and expense of seeking
24 protection in that court of its confidential material, and nothing in these provisions
25 should be construed as authorizing or encouraging a Receiving Party in this Action
26 to disobey a lawful directive from another court.

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1 9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE
 2 PRODUCED IN THIS LITIGATION

3 (a) The terms of this Order are applicable to information produced by a
 4 Non-Party in this Action and designated as “CONFIDENTIAL.” Such information
 5 produced by Non-Parties in connection with this litigation is protected by the
 6 remedies and relief provided by this Order. Nothing in these provisions should be
 7 construed as prohibiting a Non-Party from seeking additional protections.

8 (b) In the event that a Party is required, by a valid discovery request, to
 9 produce a Non-Party’s confidential information in its possession, and the Party is
 10 subject to an agreement with the Non-Party not to produce the Non-Party’s
 11 confidential information, then the Party shall:

12 (1) promptly notify in writing the Requesting Party and the Non-Party
 13 that some or all of the information requested is subject to a confidentiality agreement
 14 with a Non-Party;

15 (2) promptly provide the Non-Party with a copy of the Stipulated
 16 Protective Order in this Action, the relevant discovery request(s), and a reasonably
 17 specific description of the information requested; and

18 (3) make the information requested available for inspection by the Non-
 19 Party, if requested.

20 (c) If the Non-Party fails to seek a protective order from this Court within
 21 14 days of receiving the notice and accompanying information, the Receiving Party
 22 may produce the Non-Party’s confidential information responsive to the discovery
 23 request. If the Non-Party timely seeks a protective order, the Receiving Party shall
 24 not produce any information in its possession or control that is subject to the
 25 confidentiality agreement with the Non-Party before a determination by the Court.
 26 Absent a court order to the contrary, the Non-Party shall bear the burden and
 27 expense of seeking protection in this Court of its Protected Material.

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10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected Material to any person or in any circumstance not authorized under this Stipulated Protective Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the Protected Material, (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of this Order, and (d) request such person or persons to execute the “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit A.

11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED MATERIAL

When a Producing Party gives notice to Receiving Parties that certain inadvertently produced material is subject to a claim of privilege or other protection, the obligations of the Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure may be established in an e-discovery order that provides for production without prior privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure of a communication or information covered by the attorney-client privilege or work product protection, the parties may incorporate their agreement in the stipulated protective order submitted to the Court.

12. MISCELLANEOUS

12.1 Right to Relief. Nothing in this Order abridges the right of any person to seek its modification by the Court in the future.

12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective Order, no Party waives any right it otherwise would have to object to

1 disclosing or producing any information or item on any ground not addressed in this
2 Stipulated Protective Order. Similarly, no Party waives any right to object on any
3 ground to use in evidence of any of the material covered by this Protective Order.

4 12.3 Filing Protected Material. A Party that seeks to file under seal any
5 Protected Material must comply with Civil Local Rule 79-5. Protected Material
6 may only be filed under seal pursuant to a court order authorizing the sealing of the
7 specific Protected Material at issue. If a Party's request to file Protected Material
8 under seal is denied by the court, then the Receiving Party may file the information
9 in the public record unless otherwise instructed by the court.

10 11 13. FINAL DISPOSITION

12 After the final disposition of this Action, as defined in Section 4
13 (DURATION), within 60 days of a written request by the Designating Party, each
14 Receiving Party must return all Protected Material to the Producing Party or destroy
15 such material. As used in this subdivision, "all Protected Material" includes all
16 copies, abstracts, compilations, summaries, and any other format reproducing or
17 capturing any of the Protected Material. However, the Plaintiffs may retain a copy
18 of any report generated in this matter listing the names of employees on whose
19 behalf the Plaintiffs claim fringe benefit contributions, the hours worked by these
20 employees, the wages paid to the employees, their work classifications, and the
21 contributions claimed by the Plaintiffs. The report referenced in the prior sentence
22 shall be used by the Plaintiffs only for the purpose of allocating any contributions
23 collected and analyzing any benefits allegedly owed to these employees. Whether
24 the Protected Material is returned or destroyed, the Receiving Party must submit a
25 written certification to the Producing Party (and, if not the same person or entity, to
26 the Designating Party) by the 60 day deadline that (1) identifies (by category, where
27 appropriate) all the Protected Material that was returned or destroyed; and (2)
28 affirms that the Receiving Party has not retained any copies, abstracts, compilations,

1 summaries, or any other format reproducing or capturing any of the Protected
2 Material. Notwithstanding this provision, Counsel are entitled to retain an archival
3 copy of all pleadings, motion papers, trial, deposition, and hearing transcripts, legal
4 memoranda, correspondence, deposition and trial exhibits, expert reports, attorney
5 work product, and consultant and expert work product, even if such materials
6 contain Protected Material. Any such archival copies that contain or constitute
7 Protected Material remain subject to this Protective Order as set forth in Section 4
8 (DURATION).

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10 14. Any violation of this Order may be punished by any and all appropriate
11 measures including, without limitation, contempt proceedings and/or monetary
12 sanctions.

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14 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

15
16 DATED March 25, 2024



17 Attorneys for Plaintiffs

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19 DATED: March 25, 2024



20 Attorneys for Defendant

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22 FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

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24 DATED: March 27, 2024



25 Honorable Steve Kim
26 United States Magistrate Judge
27
28

EXHIBIT AACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of
 _____ [print or type full address], declare under
 penalty of perjury that I have read in its entirety and understand the Stipulated
 Protective Order that was issued by the United States District Court for the Central
 District of California on _____ [date] in the case of **Trustees of the
 Southern California Pipe Trades Health and Welfare Trust Fund, et al. v.
 Circulating Air, Inc., Case No. 2:23-cv-08624-SK**. I agree to comply with and to
 be bound by all the terms of this Stipulated Protective Order, and I understand and
 acknowledge that failure to so comply could expose me to sanctions and punishment
 in the nature of contempt. I solemnly promise that I will not disclose in any manner
 any information or item that is subject to this Stipulated Protective Order to any
 person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court
 for the Central District of California for the purpose of enforcing the terms of this
 Stipulated Protective Order, even if such enforcement proceedings occur after
 termination of this action. I hereby appoint _____ [print
 or type full name] of _____ [print or type
 full address and telephone number] as my California agent for service of process in
 connection with this action or any proceedings related to enforcement of this
 Stipulated Protective Order.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____